IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6993 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KJ MEHTA

Versus

THE WORKMEN OF KJ MEHTA

Appearance:

1. Special Civil Application No. 6993 of 2002

MR RJ OZA for Petitioner No. 1

MR KL DAVE for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 24/09/2004

ORAL JUDGEMENT

In this petition, the petitioner challenges the legality and validity of the award dated 28.2.2002, passed by the Industrial Tribunal, Bhavnagar.

2. The short facts leading to the present petition are that the respondent Union had approached the

Industrial Tribunal, Bhavnagar, by raising number of demands from the petitioner management. During the pendency of the reference, number of issues were amicably settled between the parties and the only one question remains is that of salary of two of the workmen who were the members of the Union, whose claim was for being paid the salary of that of the staff nurse. It was the case of the respondent that Shri M.P. Rana and Smt. Hasumati Harsor were working as staff nurse since 1978, but were not being paid salary attached to the said post. The grievance made by the respondent before the Industrial Tribunal was that the petitioner management is extracting work of the staff nurse from the said two persons, but are not paid the salary attached to the said post.

3. From the office order dated 16th September, 1969 (Exhibit 28) and subsequent office order dated 1.5.1978 (Exhibit 29), it is clear that the said two persons were promoted from the post of student nurse to the junior nurse (thereafter were also promoted to the post of unqualified nurse) and subsequently, since the management found it difficult to fill up the vacant post of qualified nurses, these two persons were promoted to the post of qualified staff nurse.

4. From the respondent side, on the other hand it is not disputed that workmen concerned did not possess the educational qualification and experience required for the post of staff nurse. It is not in dispute that the persons did not possess the necessary qualification of BPNA and the diplomas as required under the Rules.

5. The Industrial Tribunal, however, on the basis of the fact that the petitioner had taken the work of staff nurse from the said two persons, directed by way of the impugned award that Shri M.P. Rana and Smt.Hasumati Harsor should be placed in the pay-scale of Rs. 1,350 2,200 (pay-scale of that of the staff nurse) with effect from 1.1.1989 notionally and they should be paid actual difference in salary from 1.1.1996 on the above basis.

6. Appearing for the petitioner, learned Counsel Mr. R.J. Oza has submitted that the award of the Industrial Tribunal is illegal and unlawful. That the said nurses were unqualified nurses and did not possess the education qualification as well as experience required to hold the post of staff nurse. It was only on account of administrative exigencies that the work was assigned to them, but that by itself would not justify the nurses to claim full salary of the qualified staff nurse. He has submitted that the onus was on the respondents to

establish parity on all counts including the responsibility, experience and educational qualifications before the pay-scale attached to the post of staff nurse could have been claimed. He has submitted that for taking the work of the higher post, the petitioner had already compensated the persons concerned by lifting the ceiling of their pay-scale and granting four increments. He therefore submitted that there was no justification in the demand of the respondent to grant to the said two persons the pay-scale of the staff nurse and the Industrial Tribunal therefore, erred in allowing the Reference to that extent.

6.1 Learned Counsel Mr. Oza relies upon the decision of the Hon'ble Supreme Court reported in 2003 (1) SCC 250, in which it is held that principles of equal pay for equal work depends not only on the nature or volume of work, but also on the qualitative difference in reliability and responsibility as well and even in a case of same functions, responsibilities do make a real and substantial difference. It was further observed in the said decision that it is for the claimant who claims parity to substantiate the clear-cut basis of equivalence and a resultant hostile discrimination and in absence of requisite material substantiating the claim, the Court should not grant parity of pay which regularly employed staff receive, merely on presumption of equality of the nature of work. In yet another decision of the Hon'ble Supreme Court in UOI Vs. Tarit Ranjan Das, reported in (2003) 11 SCC 658, the apex Court was pleased to reiterate the above principle and observe that the principles of equal pay for equal work cannot apply merely on the basis of designation and the nature of work and other relevant factors have also to be taken into account and burden of proof is on the employee who claims such parity.

6.2 In (2004) 4 SCC 646 (M.P. Rural Agriculture Extension Officers Association Vs. State of M.P. and anr.) yet the Hon'ble Supreme Court observed that principle of equal pay for equal work cannot apply when two different pay-scales have been provided for the same cadre on the basis of educational qualification even if nature of work is same and posts are interchangeable.

7. Appearing for the respondent, learned Advocate Mr. Dave has supported the decision of the Industrial Tribunal. He has submitted that indisputably the said two persons had actually discharged their duties as staff nurses and that therefore, management cannot deny the salary attached to the said post. He has submitted that

the workmen have put in long number of years of satisfactory and efficient service. There has not been any complaint against their functioning and it is therefore, not correct on the part of the petitioner to pay lower wages while taking work of the higher post. He has submitted that these nurses worked for looking after large number of patients of T.B and they have rendered unselfish and unblemished services. Pointing out an example of Shri L.M. Barad, he submits that in the past also the petitioner had promoted unqualified persons to the post of Assistant Matrons by relaxing the requirements of minimum qualification required for being considered on the said post and therefore, the objection with respect to the lack of qualifications on the part of the nurses is not justified.

8. Keeping the above judicial principles in mind and reverting back to the facts of the present case, it is clear that the persons concerned admittedly did not possess the educational qualification attached to the post of staff nurse. Nothing has been pointed out to this Court to suggest that the educational qualifications were meant only for direct recruitment and that in case of promotion there was no requirement of minimum educational qualification. The reliance placed by the learned Counsel for the respondent on the case of Shri Barad can be of no avail. Firstly, Shri Barad was promoted to some other post and not to the post of staff nurse and secondly, even if an illegal promotion was granted to some other person, that by itself would not give any legal right to the respondent to claim such a benefit in favour of the said two persons. In the present case, the facts clearly emerge to the fact that though the said two persons were asked to work as staff nurses, they admittedly did not possess educational qualification for the same. To compensate them for discharging higher responsibilities, the management had lifted the ceiling of pay-scale and actually granted 4 increments. In that view of the matter, there was no further justification to claim the full pay-scale of that of staff nurse. In view of this factual background and in view of the judicial principles laid down by the Hon'ble Supreme Court as noted above, I am of the view that the Industrial Tribunal gravely erred in law in allowing the Reference and directing payment in favour of the said two persons on par with qualified staff nurses. The Industrial Tribunal's award therefore cannot be sustained and it deserves to be set aside. The remuneration of the staff nurses could have been paid to the said persons if they were possessing the qualification attached to the said post. When

unqualified persons are placed in administrative exigencies on the higher post, the qualitative difference in the discharge of the duty can be of valid ground for the petitioner for not paying the fulfledged pay-scale attached to the higher post. As noted above, since it is found that the petitioner had already remunerated and compensated the persons concerned by releasing four increments and lifting the ceiling of pay-scale, no further remuneration could have been directed by the Industrial Tribunal. In the result, the impugned award of the Industrial Tribunal is set aside. The petition is allowed.

9. During the course of the arguments learned Counsel for the petitioner has submitted that the issue is important to the petitioner from the policy and precedent point of view. He would therefore, I am sure, take up the case of the respondent with the management for payment of ex-gratia remuneration, in view of the long and satisfactory services rendered by the said two nurses. With these observations, the petition is disposed of.

Rule is made absolute with no order as to costs.

(Akil Kureshi, J.)

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